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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 RICHARD LEE JOHNSEN,

9 Plaintiff,

10 v.

11 LELAND HARLAN, et al.,

12 Defendants.

Case No. C19-0058-MJP-MAT

ORDER GRANTING MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT AND DIRECTING
SERVICE

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14 This is a 42 U.S.C. § 1983 prisoner civil rights action. Currently before the Court is
15 plaintiff's motion for leave to file an amended complaint.¹ (Dkt. 13.) Counsel for defendants has
16 appeared but did not file an opposition to the motion. Having considered plaintiff's motion, the
17 balance of the record and the governing law, the Court finds and ORDERS:

18 (1) Plaintiff's motion for leave to amend (Dkt. 13) is GRANTED. The Court is
19 afforded discretion to grant leave to amend and "should freely give leave when justice so requires."
20 Fed. R. Civ. P. 15(a)(2). The generosity in granting leave to amend is "to be applied with extreme
21 liberality." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051-52 (9th Cir. 2003).

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23 ¹ Plaintiff also has filed a request that the Court communicate with one of his witnesses on his behalf. (Dkt.
18.) The Court cannot act on plaintiff's behalf in this manner.

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Courts consider five factors when deciding whether to grant leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether the pleading has previously been amended. *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). Having screened plaintiff's proposed amended complaint (Dkt. 13 at 4-11), the Court finds no indication of bad faith, undue delay, prejudice to defendants, or futility. Although plaintiff has already amended his complaint once at the direction of the Court, the balance of the factors weighs in favor of allowing the amendment.

(2) The Clerk is directed to file plaintiff's proposed amended complaint (Dkt. 13 at 4-11) as his second amended complaint.

(3) Service by Clerk

The Clerk is directed to send the following to the named defendants by first class mail: a copy of plaintiff's second amended complaint, a copy of this Order, two copies of the notice of lawsuit and request for waiver of service of summons, a waiver of service of summons, and a return envelope, postage prepaid, addressed to the Clerk's Office.

(4) Response Required

Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of service of summons. A defendant who timely returns the signed waiver shall have **sixty (60) days** after the date designated on the notice of lawsuit to file and serve an answer to the complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

A defendant who fails to timely return the signed waiver will be personally served with a summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally served shall file an answer or motion permitted under Rule 12 within **twenty-one (21) days** after service.

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1 (5) Filing and Service by Parties, Generally

2 All attorneys admitted to practice before this Court are required to file documents
3 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,
4 www.wawd.uscourts.gov, for a detailed description of the requirements for filing via CM/ECF.
5 All non-attorneys, such as *pro se* parties and/or prisoners, may continue to file a paper original
6 with the Clerk. All filings, whether filed electronically or in traditional paper format, must indicate
7 in the upper right hand corner the name of the magistrate judge to whom the document is directed.

8 For any party filing electronically, when the total of all pages of a filing exceeds fifty (50)
9 pages in length, a paper copy of the document (with tabs or other organizing aids as necessary)
10 shall be delivered to the Clerk's Office for chambers. The chambers copy must be clearly marked
11 with the words "Courtesy Copy of Electronic Filing for Chambers."

12 Any document filed with the Court must be accompanied by proof that it has been served
13 upon all parties that have entered a notice of appearance in the underlying matter.

14 (6) Motions, Generally

15 Any request for court action shall be set forth in a motion, properly filed and served.
16 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a
17 part of the motion itself and not in a separate document. The motion shall include in its caption
18 (immediately below the title of the motion) a designation of the date the motion is to be noted for
19 consideration upon the Court's motion calendar.

20 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for
21 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),
22 motions for default, requests for the clerk to enter default judgment, and motions for the court to
23 enter default judgment where the opposing party has not appeared shall be noted for consideration

1 on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions shall be noted for
2 consideration no earlier than the third Friday following filing and service of the motion. *See* LCR
3 7(d)(3). All dispositive motions shall be noted for consideration no earlier than the fourth Friday
4 following filing and service of the motion. *Id.*

5 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-
6 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday immediately
7 preceding the date designated for consideration of the motion. If a party (i.e. a *pro se* litigant
8 and/or prisoner) files a paper original, that opposition must be received in the Clerk's office by
9 4:30 p.m. on the Monday preceding the date of consideration.

10 The party making the motion may file and serve, not later than 11:59 p.m. (if filing
11 electronically) or 4:30 p.m. (if filing a paper original with the Clerk's office) on the date designated
12 for consideration of the motion, a reply to the opposing party's briefs and affidavits.

13 (7) Motions to Dismiss and Motions for Summary Judgment

14 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil
15 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil
16 Procedure should acquaint themselves with those rules. As noted above, these motions shall be
17 noted for consideration no earlier than the fourth Friday following filing and service of the motion.

18 Defendants filing motions to dismiss or motions for summary judgment are advised that they
19 MUST serve *Rand* and *Wyatt* notices concurrently with motions to dismiss and motions for
20 summary judgment so that *pro se* prisoner plaintiffs will have fair, timely and adequate notice of
21 what is required of them in order to oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941
22 (9th Cir. 2012). The Ninth Circuit has set forth model language for such notices:
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1 A motion for summary judgment under Rule 56 of the Federal Rules of
2 Civil Procedure will, if granted, end your case.

3 Rule 56 tells you what you must do in order to oppose a motion for summary
4 judgment. Generally, summary judgment must be granted when there is no
5 genuine issue of material fact – that is, if there is no real dispute about any
6 fact that would affect the result of your case, the party who asked for
7 summary judgment is entitled to judgment as a matter of law, which will
8 end your case. When a party you are suing makes a motion for summary
9 judgment that is properly supported by declarations (or other sworn
10 testimony), you cannot simply rely on what your complaint says. Instead,
11 **you must set out specific facts in declarations, depositions, answers to
12 interrogatories, or authenticated documents, as provided in Rule 56(e),
13 that contradict the facts shown in the defendant's declarations and
14 documents and show that there is a genuine issue of material fact for
15 trial. If you do not submit your own evidence in opposition, summary
16 judgment, if appropriate, may be entered against you. If summary
17 judgment is granted, your case will be dismissed and there will be no
18 trial.**

11 *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added); *see Wyatt v. Terhune*, 315
12 F.3d 1108, 1120 n.14 (9th Cir. 2003) (extending the fair notice requirement to motions to dismiss
13 for failure to exhaust administrative remedies).

14 Defendants who fail to file and serve the required *Rand* and *Wyatt* notices on plaintiff may
15 have their motion stricken from the Court's calendar with leave to re-file.

16 (8) Direct Communications with District Judge or Magistrate Judge

17 No direct communication is to take place with the District Judge or Magistrate Judge with
18 regard to this case. All relevant information and papers are to be directed to the Clerk.
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1 (9) The Clerk is directed to send copies of this order to the parties and to the Honorable
2 Marsha J. Pechman.

3 Dated this 11th day of April, 2019.

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6 Mary Alice Theiler
7 United States Magistrate Judge
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